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EXAMINER	
ASHBURN, STEVEN L	
ART UNIT	**PAPER NUMBER**
3714	17

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/680,601	WEBB ET AL.	
	Examiner	Art Unit	
	Steven Ashburn	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 October 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *5,7,9,13-17 and 20-49* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *26-32,46,48 and 49* is/are allowed.

6)☒ Claim(s) *5,7,9,13-17,20-25,33-45 and 47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Oct. 13, 2003 has been entered.

Drawings

The objection to the drawings under 37 CFR 1.83(a) is withdrawn.

Claim Rejections - 35 USC § 112

The rejection of claim 9 under 35 U.S.C. 112, first paragraph is withdrawn.

The rejection of claim 30 under 35 U.S.C. 112, second paragraph is withdrawn.

Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 40 is dependent on itself. Hence, there is insufficient antecedent basis for the limitations in the claim. For the purposes of examination, the examiner assumes claim 40 is dependant upon claim 35.

Claim Rejections - 35 USC § 103

Claims 5, 7, 14-17 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoseloff, U.S. Patent 6,312,334 B1 (Nov. 6, 2001) in view of Demar et al., U.S. Patent 6,203,429 B1 (Mar. 20, 2001)

Yoseloff discloses a gaming device having multiple rounds games wherein the game's themes are based on television game shows. *See col. 7:48-63.* In one embodiment *Yoseloff* describes a game based on the well known game, LET'S MAKE A DEAL® in which players are offered the decision to risk their current prizes in return for a chance to receive prizes of greater value. *See fig. 6, 7; col. 7:18-33.*

Regarding independent claim 5 and 14: *Yoseloff* teaches the following features:

a. Associating a high value award with either a first selector or a second selector, wherein the high value award is greater than the currently held player award. *See fig. 7; col. 7:28-35.*

b. Associating a low value award with the selector not associated with the high value award, wherein the low value award is less than the player award. *See id.*

c. Enabling the player to keep the player award, choose the first selector or choose the second selector. *See col. 5:34-59, col. 7:28-35.* In particular, a player may elect to hold his award or exchange the award to for the chance to pick one of three doors. *See id.*

d. Providing the player award to the player if the player chooses to keep the player award. *See id.*

e. Providing the low value award to the player if the player chooses the selector associated with the low value award. *See col. 7:28-35*

f. Providing the high value award to the player if the player chooses the selector associated with the high value award. *See id.*

g. If the player chooses the selector associated with the high value award, repeating the steps above at least one time using the provided higher value award and changing the newly associated high and low value awards to be greater than, respectively, the provided high value award. *See col. 6:32-34.*

As listed above, *Yoseloff* describes all the features of the claimed invention except selecting values for the awards from a predetermined range. Instead, *Yoseloff* provides that the selection of a high value award increases a player's currently held award based on the value of the currently held award. *See col. 7:32-35.* It does not describe the manner in which the high value award is selected.

It is generally known in the art to select values for awards from predetermined ranges of awards to control the total expected payout of a game. For example, *Demar* describes an event table having eight awards ranging between 5 and 50 coins occurring at different frequencies which combine to provide a total expected value for the game. *See fig. 15; col. 13:21-14:13.*

It would have been obvious to an artisan at the time of the invention to modify *Yoseloff*, wherein the selection of a high value award increases a player's currently held award based on the value of the currently held award, to select the high value award from a predetermined range in order to control the expected payout of the game. As a result, the overall payout of the gaming device could be controlled to meet gaming regulations, player award expectations and operator profit expectations.

Regarding claim 7: *Yoseloff* discloses repeating the game steps if the player chooses the selector with the high value award whereby the high value award is used to determine the currently-held award while repeating the steps. *See fig. 1, 2; col. 6:32-35.*

Regarding claim 15: *Yoseloff* describes ending a sequence if an unsuccessful outcome occurs. *See col. 6:37-38.* More specifically, in the preferred embodiment the player is required to risk his award to participate in a subsequent segment. Hence, if a player losses his award due to an unsuccessful outcome, then the player cannot participate in a subsequent segment and the sequence is ended.

Regarding claim 16: *Yoseloff* describes replacing the currently held award with a lower value award if an unsuccessful outcome occurs. *See col. 7:30-31.* More specifically, *Yoseloff* replaces the currently held award by reducing it by a percentage. *See id.*

Regarding claim 17: *Yoseloff* additionally discloses replacing a currently-held award with a lower value award and ending the sequence if the unsuccessful outcome occurs. *See col. 6:8-10, 6:37-38, 7:30-31.* More specifically, *Yoseloff* describes conditioning a player's participation in a subsequent game segment on achieving a successful outcome. *See col. 6:8-10.* If a player selects an unsuccessful outcome, the player's currently held award is replaced with a lower award by reducing it by a percentage. *See col. 7:30-31.*

Regarding claim 22: *Yoseloff* describes replacing the currently held award with the higher value award if the successful outcome occurs. *See col. 7:19-34.*

Regarding claim 23: *Yoseloff* discloses repeating the game steps if the player chooses the selector with the high value award. *See fig. 1, 2; col. 6:32-35.*

Regarding claim 24: *Yoseloff* discloses repeating the game steps if the player chooses the selector with the high value award whereby the high value award is used to determine the currently-held award while repeating the steps. *See fig. 1, 2; col. 6:32-35.*

Claims 9, 13, 25, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yoseloff*, in view of *Demar*, as applied to claims 5 and 14 above, in further view of Vancura, U.S. Patent 6,398,218 (Jun. 4, 2002).

In regards to claims 9, the gaming system suggested by the combination of *Yoseloff* and *Demar* describes all the features of the instant claims except ending the bonus sequence if the player chooses a predetermined number of selections associated with a highest award value in a sequence. Regardless of the deficiency, this feature would have been obvious to an artisan in view of *Vancura*.

Vancura discloses an analogous gaming system providing extended bonus games. The reference describes various methods for controlling a bonus game's length and player involvement. *See col. 2:64-67.* In one variation, the bonus sequence ends when a player's winnings equals or exceeds a predetermined value in order to protect operators against paying unexpectedly large awards. *See col. 4:12-16.* In another variation, when a player competes a predetermined number of bonus attempts is paid a jackpot to terminate the bonus round. *See col. 4:27-35.* Thus, *Vancura* suggests terminating a bonus sequence upon award of a large payout to control the length and expected value of a bonus game. In view of *Vancura*, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the multi-segment bonus game suggested by the combination of *Yoseloff* and *Demar*, wherein a player continues to make selections until choosing a non-winning selection, to add the feature of ending the bonus sequence if the player chooses a selector associated with a highest award value in a sequence. As suggested by *Vancura*, the modification would protect operators by controlling a bonus game's length and payout while maintaining player involvement.

In regards to claim 13, the gaming system taught by *Yoseloff* describes all the features of the instant claims except offering selections with at least two selections with high values and two selections

with low values. Regardless of the deficiencies, these features were known in the art at the time of the invention and would have been obvious to an artisan in view of *Vancura*.

Vancura discloses a bonus game with three selections. *See fig. 1; col. 12:47-54.* Alternatively, the reference suggests that any number of outcome selections could be used. *See id.* As is notoriously known in the art, modifying the number of possible outcomes modifies the odds of the game. Thus, in view of *Vancura*, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Yoseloff*, wherein game outcomes include a high and low selection outcomes, to add the feature of offering selections with at least two selections with high values and two selections with low values to modify the odds of selecting a successful outcome and thereby control the games expected payout. Furthermore, it would be obvious to an artisan to increase the number of selections without modifying the odds merely to change to appearance of the game.

In regards to claim 25: The gaming device described by the combination of *Yoseloff* and *Demar* does not include the feature of ending a game sequence if the successful outcome includes a highest value award. *Vancura* discloses methods for controlling the length of games. *See col. 2:64-67.* In one variation, it teaches ending a sequence of games when a player's winnings exceeds a predetermined value in order to protect operators from paying unexpectedly large awards. Hence, in view of *Vancura*, it would have been obvious to modify the gaming device described by the combination of *Yoseloff* and *Demar*, wherein a player participates in a sequence of games, to add the feature of ending the sequence if the outcome is the highest value award in order to protect operators from paying unexpectedly large awards.

In regards to claim 33, *Vancura* additionally teaches continuing a sequence until a player inputs a decision to keep the currently held award. *See fig. 2.*

In regards to claim 34, *Vancura* additionally teaches continuing a sequence until the unsuccessful outcome occurs.. *See fig. 2.*

Claims 20, 35-45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yoseloff*, in view of LET'S MAKE A DEAL®, Stefen Hatos-Monty Hall Productions (1963-1986), Ron Greenberg-Dick Clark Productions (1990-1991) (hereinafter "*LMD*") and *Demar*.

The features of the *LMD* are described in the following references:

a. Schwartz, et al., *The Encyclopedia of TV Game Shows, 3rd Ed.*, Checkmark Books (1999) (hereinafter "*Encyclopedia*")

b. *Let's Make A Deal*, <http://www.meltingpot.fortunecity.com/andorra/57/lmad.html> printed on Mar. 21, 2001 (hereinafter "*Fortune").*

c. *Let's Make A Deal*, <http://www.curtalliaume.com/lmad.html> downloaded from the Internet Apr. 3, 2003 (hereinafter "*Curtalliame*")

d. *Let's Make A Deal*, <http://www.geocities.com/TelevisionCity/Set/7880/RULES/-LMaD.html> printed on Mar. 21, 2001 (hereinafter "*Geocities*")

e. *The Official Let's Make A Deal Website,* <http://www.letsmakeadeal.com/showinfo.htm> printed on Mar. 16, 2001 (hereinafter "*LMAD*")

f. Afra Zomordian, *The Monty Hall Problem*, Jan 20, 1998 (hereinafter "*Zomo*").

g. Examiner's Affidavit by Corbett B. Coburn III, July 25, 2002 (hereinafter "*Affidavit A*").

h. Examiner's Affidavit by Corbett B. Coburn III, Apr. 3, 2003 (hereinafter "*Affidavit B*").

Regarding claims 20 and 42: *Yoseloff* discloses all the features of the claims except a tease sequence and determining whether to perform the tease sequence if the player decides to play for a higher award based on a random probability.

LMD is the television game show upon which the LET'S MAKE A DEAL® embodiment of *Yoseloff* is based. In the course of the game, players decided to keep a current award or exchange it for the opportunity to select a higher-value award. Sometimes the show's emcee would tease players by offering players cash to change their decision. *See LMAD, p. 1, Affidavit B, Geocities, p. 2.* In performing a "tease sequence" the emcee would offer some amount of cash and then incrementally increase the offer over a different ranges. *See LMAD, p. 1, Affidavit B, Geocities, p. 2.* Hence, in view of *LMD*, it would have been obvious to an artisan to modify the gaming device disclosed by *Yoseloff*, wherein a game is based on *LMD*, to add the feature of *LMD's* tease sequence in which a player is sometimes offered an award if the player decided to play for a higher award rather than keep the current award. As suggested by *Yoseloff*, the modification would enhance the gaming device by retaining thematic continuity with the features of the game show upon which gaming device is based. *See col. 7:48-63.* Furthermore, it would provide a feature proven to be popular on the game show and thereby attract more players to the gaming device.

As discussed above, the combination of *Yoseloff* with *LMD* describes all the features of the claims except determining whether to offer the tease sequence based on a random probability. Regardless, it is well known in the gaming art to generate outcomes, awards and events based on random probabilities in order to create the unpredictability which fundamental to entertainment and fairness of gaming machines. For example, *Demar* provides an analogous situation in which the features of a board game are incorporated into a gaming device. The patent discloses a gaming device based, in fact, on the well-known board game, MONOPOLY®. *See figure 8(300); col. 10:59-11:15.* Similar to *Yoseloff*, the gaming device provides players with a multi-stage game. *See fig. 21; col. 15:6-11.* To simulate events that occur

at irregular times in the board game (e.g. landing on "Chance") *Demar* determines the occurrence based on a random probability. *See fig. 14, 222(232).* Similarly, *Demar* determines whether to provide other irregularly occurring game events based on a random probability. In particular, the device provides a "RANDOM" bonus sequence based on a random probability. *See fig. 21; col. 15:12-65.* In view of *Demar*, it would have been obvious to an artisan at the time of the invention to modify the combination of *Yoseloff* with *LMD*, wherein an tease sequence occurs at irregular times, to add the feature of offer the tease sequence based on a random probability. As a result, the gaming device would be enhanced by incorporating a unpredictable feature of *LMD* into a gaming device in a random manner that recreate the unpredictability of the game shows enjoyed by players while satisfying regulatory requirements requiring randomness to ensure fairness. Moreover, in accordance with the teachings of *Yoseloff*, the feature would allow the gaming device to retain thematic continuity with the game show whereby players are sometimes offered a "tease sequence". *See col. 7:48-63.*

Regarding claim 21: *LMD* additionally suggests performing a tease sequence if an unsuccessful outcome occurs. *See LMAD, p. 1, Affidavit B, Geocities, p. 2.* Hence, as discussed in claim 20, in view of *Demar*, it would have been obvious to an artisan at the time of the invention to modify the combination of *Yoseloff* with *LMD*, wherein an tease sequence occurs at irregular times, to add the feature of offer the tease sequence based on a random probability. As a result, the gaming device would be enhanced by incorporating a unpredictable feature of *LMD* into a gaming device in a random manner that recreate the unpredictability of the game shows enjoyed by players while satisfying regulatory requirements requiring randomness to ensure fairness. Moreover, in accordance with the teachings of *Yoseloff*, the feature would allow the gaming device to retain thematic continuity with the game show whereby players are sometimes offered a "tease sequence". *See col. 7:48-63..*

Regarding claims 35 and 47: *Yoseloff* teaches the following features:

a. Enabling a player to input a decision into a game processor whether to keep a currently held award or risk losing the currently held award to try for a higher value award, wherein the decision results in a successful outcome or an unsuccessful outcome for the player in the sequence. *See fig. 1, 2; col. 3:19-4:20, 5:20-6:44.*

b. Determining if the decision produces a successful or unsuccessful outcome in the sequence. *See id.*

c. Providing an award to the player if the decision produces a successful outcome. *See id.*

d. Ending the sequence if the player inputs a decision to keep the current award. See id. If and after the player inputs a decision to try for the higher value award, randomly determining whether the successful outcome or the unsuccessful outcome occurs by randomly determining if the player's inputted decision yields the higher value award which is the successful outcome. *See id.* In particular, the player's selection of a door is random determination of a successful outcome. This determination is made "if and after" a player chooses to risk his current award in a subsequent segment. If the outcome is successful, the player receives a higher value award.

Yoseloff discloses all the features of the claim except determining whether to perform a tease sequence if the player decides to play for a higher award based on a random probability.

LMD is the television game show upon which the LET'S MAKE A DEAL® embodiment of *Yoseloff* is based. In the course of the game, players decided to keep a current award or exchange it for the opportunity to select a higher-value award. Sometimes the show's emcee would tease players by offering players cash to change their decision. *See LMAD, p. 1, Affidavit B, Geocities, p. 2.* In performing a "tease sequence" the emcee would offer some amount of cash and then incrementally

increase the offer over a different ranges. *See LMAD, p. 1, Affidavit B, Geocities, p. 2.* Hence, in view of *LMD*, it would have been obvious to an artisan to modify the gaming device disclosed by *Yoseloff*, wherein a game is based on *LMD*, to add the feature of *LMD's* tease sequence in which a player is sometimes offered an award if the player decided to play for a higher award rather than keep the current award. As suggested by *Yoseloff*, the modification would enhance the gaming device by retaining thematic continuity with the features of the game show upon which gaming device is based. *See col. 7:48-63.* Furthermore, it would provide a feature proven to be popular on the game show and thereby attract more players to the gaming device.

As discussed above, the combination of *Yoseloff* with *LMD* describes all the features of the claims except determining whether to offer the tease sequence based on a random probability. Regardless, it is well known in the gaming art to generate outcomes, awards and events based on random probabilities in order to create the unpredictability which fundamental to entertainment and fairness of gaming machines. For example, *Demar* provides an analogous situation in which the features of a board game are incorporated into a gaming device. The patent discloses a gaming device based, in fact, on the well-known board game, MONOPOLY®. *See figure 8(300); col. 10:59-11:15.* Similar to *Yoseloff*, the gaming device provides players with a multi-stage game. *See fig. 21; col. 15:6-11.* To simulate events that occur at irregular times in the board game (e.g. landing on "Chance") *Demar* determines the occurrence based on a random probability. *See fig. 14, 222(232).* Similarly, *Demar* determines whether to provide other irregularly occurring game events based on a random probability. In particular, the device provides a "RANDOM" bonus sequence based on a random probability. *See fig. 21; col. 15:12-65.* In view of *Demar*, it would have been obvious to an artisan at the time of the invention to modify the combination of *Yoseloff* with *LMD*, wherein an tease sequence occurs at irregular times, to add the feature of offer the tease sequence based on a random probability. As a result, the gaming device would be enhanced by incorporating a unpredictable feature of *LMD* into a gaming device in a random manner that recreate the

unpredictability of the game shows enjoyed by players while satisfying regulatory requirements requiring randomness to ensure fairness. Moreover, in accordance with the teachings of *Yoseloff*, the feature would allow the gaming device to retain thematic continuity with the game show whereby players are sometimes offered a "tease sequence". *See col. 7:48-63.*

In regard to claims 36, *Yoseloff* additionally teaches ending the sequence if the unsuccessful outcome occurs. *See col. 6:1-44.* Alternatively, *LMD* teaches the same feature. *See Geocities, p. 1.*

In regard to claims 37, *Yoseloff* additionally teaches replacing the currently held award with the higher value award if the successful outcome occurs. *See col. 7:19-34.* Alternatively, *LMD* teaches the same feature. *See id.*

In regards to claim 38, *Yoseloff* additionally teaches repeating the sequence if the successful outcome occurs. *See col. 6:1-44.*

In regards to claim 39, *Yoseloff* additionally teaches using the successful outcome to determine the currently held award while repeating the steps. *See col. 6:1-44, 7:19-34.*

In regards to claims 40 and 41, the gaming device suggested by the combination of *Yoseloff* with *LMD* describes all the features of the claims except automatically performing the tease sequence. Regardless, it is implicit in the automated gaming device described by the combination of *Yoseloff* with *LMD*, wherein a processor causes the performance of a tease sequence, that the processor causes the tease sequence to be performed automatically.

In regards to claim 43, *LMD* additionally suggests performing a tease sequence if the unsuccessful outcome occurs. *See id.* Thus, the gaming device suggested by the combination of *Yoseloff* with *LMD* describes all the features of the claims except atomically performing the tease sequence. Regardless, it is implicit in the automated gaming device described by the combination of *Yoseloff* with *LMD*, wherein a processor causes the performance of a tease sequence, that the processor causes the tease sequence to be performed automatically.

In regards to claim 44, *LMD* additionally suggests performing a plurality of player tease sequences. *See Fortune, p. 8; Affidavit A, Zomo, p. 1; Curtalliaume, p. 2.*. More specifically, *LMD* describes several rounds in which a player inputs a decision. *See id.* It is implicit a tease sequence could occur with each round.

In regards to claim 45, *LMD* additionally suggests enabling the player to change a selection made in inputting the decision to try for a higher value award. *See id.*

Allowable Subject Matter

Claims 26-32, 46, 48 and 49 are allowed.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Ashburn whose telephone number is 703 305 3543. The examiner can normally be reached on Monday thru Friday, 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.

s.a.

MARK SAGER
PRIMARY EXAMINER